IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 10873 of 2007(T)

PETITIONER:

K.S.ANANDAKUTTAN,
KIZHAKKEPARAYIL, MANIMALA P.O.,

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. A.K.MINI ALIAS MINI PODIYAN,
D/O PODIYAN, KATHAKAPPALLIYIL HOUSE,
ADAMATTAM BHAGAM, VADAKKARA KARA,
VELLAVOOR VILLAGE, CHANGANACHERRY TALUK.

2. JAWALA SAJIKUMAR, ALIAS LIJU SAJIKUMAR,
W/O A.K.SAJIKUMAR, ANCHANIYIL HOUSE,
CHUVATTADI BHAGOM, VADAKARA KARA,
VELLAVOOR VILLAGE, CHANGANACHERRY TALUK.

3. VELLAVOOR GRAMA PANCHAYAT, REPRESENTED
BY ITS SECRETARY, VELLAVOOR.

4. ELECTION COMMISSION,
THIRUVANANTHAPURAM.

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
SRI.LIJI.J.VADAKEDOM
SRI.S.SREEKUMAR
SRI.M.V.BOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 10873 OF 2007 T

Dated this the 19th June, 2007

JUDGMENT

Petitioner challenges Ext.P2 and seeks a declaration that the direction issued by this Court in the decision in Padmakumar v. Unnikrishnan (2004 (1) KLT 1097) is illegal and opposed to law. He seeks a direction commanding the third respondent not to permit the first respondent to preside over the meeting of the Panchayat and not to discharge any of the functions or duties as President of the Panchayat including presiding over meeting of the Panchayat and also discharging all other functions assigned to a Presiding Officer of the Panchayat under the Panchayat Raj Act and also to declare that the decisions taken by the Panchayat on 23.3.2007 as irrational and illegal and opposed to law. A further direction also is sought to the first respondent not to function as President of the Panchayat and also to direct the third respondent Panchayat to place in charge of the Vice President or Standing Committee Chairman.

2. Petitioner is a Member of Ward No.V of the third respondent Panchayat. In the last election, the first respondent was elected in the reserved category of Scheduled Caste. By Ext.P1 Order, the Munsiff Court, Changanacherry has declared the election of the first respondent as void, apparently for the reason that the petitioner belongs to the Scheduled Tribe Community. First respondent has carried the matter in appeal before the District Court, Kottayam. In the Appeal, first respondent obtained Ext.P2 order whereunder the Appellate Court passed the following directions:

> *"(i) The petitioner can participate in the meeting and proceedings of the Panchayat but she cannot exercise any voting right in any such meeting.*
>
> *(ii) The Election Commission shall not proceed to issue any fresh notice pursuant to the judgment of the Munsiff Court for by-election.*
>
> *(iii) These decisions will be in force till the*

final decision of the Appeal."

3. According to the petitioner, no permission was granted by the Court enabling the first respondent to continue as President or to discharge the functions of the President of the Panchayat. He would contend that the direction is based on the decision of this Court in Padmakumar v. Unnikrishnan 2004 (1) KLT 1097). Decisions were taken as Exts.P3 and P4 by the Committee. It is the case of the petitioner that such meetings cannot be presided over by the first respondent at all and the decisions are illegal.

4. I heard the learned counsel appearing on behalf of the parties. Counsel for petitioner would contend that Ext.P2 is unsupportable, particularly having regard to the fact that the first respondent was not a mere member, but she was in fact elected as the President. Upon the passing of Ext.P1, the election of the first respondent became void, having regard to the provisions contained in Section 107 of the Kerala Panchayatraj Act. He would submit that the decision of this Court in Padmakumar v.

Unnikrishnan (2004 (1) KLT 1097) turned on the special facts, namely that was a case where the person whose election was over-turned was a mere Member. He was not an elected President. As far as the member is concerned, in view of the application of Section 107, the election of the Member becomes void ipso facto by the pronouncement of the Judgment by the Election Court. It is to maintain a just state of affairs during the pendency of any Appeal that may be filed by such a candidate that this Court held that in appropriate cases, it is open to the Appellate Court to pass an order with suitable conditions. As far as a Member is concerned, if there is no order passed by the appellate court, he may be put to irreparable injury, if he has otherwise made out a case for grant of interim relief, he submits. As far as the member who is also elected as the President of the Local Body is concerned, the situation is completely different, submits petitioner. He would submit that Section 156(3A) provides for a contingency when the post of President becomes vacant. Section 156(3A) is extracted hereunder:

> *"156(3A): Where the Offices of the President and the Vice-President are vacant, the Chairman of the standing committee in the order mentioned in sub-section (1) of Section 162, shall perform the functions of the President till a new President or Vice-President assumes Office and where there is no President or Vice-President or Chairman of standing committee to hold the Office of the President, the eldest among the elected members shall perform the functions of the President until the President or Vice-President or Chairman of any Standing Committee assumes Office."*

Under the said provision, upon there being a vacancy in the office of the President, the senior-most Standing Committee Chairman will take over as the President. In other words, the Statute specifically provides for a contingency as has happened in this case upon the passing of Ext.P1, it is contended. He would refer to the decision in Padmakumar v. Unnikrishnan (2004 (1) KLT 1097). The material portion is extracted hereunder:

"When an appeal is preferred under the provisions of the statute itself, the power of the appellate authority being a statutory conferment, while passing an interim order, regard shall be had to the provisions of the Act. In this connection, S.107 of the Act specifically provides that an Order under S.100 or S.101 shall take effect as soon as it is pronounced by the Court. Therefore, the moment an Order is passed by the Munsiff's Court declaring the election as void, the Order has come into effect on the day the Order is being pronounced by that court. Once an Order has come into effect, then the question of staying the Order of the Munsiff's Court does not arise, since such stay will be contrary to S.107 of the Act. At the same time, in order to preserve the right of parties, until a final decision is rendered in the appeal, it will be open to the appellate authority to pass such orders as it thinks fit, at the same time not in violation of S.107 of the Act.....However, it will be open to the appellate authority to pass such Orders as it deem fit and appropriate in the facts and circumstances of each case so as to preserve right of the parties."

He would submit that it may be open to a person to continue as a Member, if the appellate court is satisfied of the establishment of a prima facie case. But to go further and say that such a member can also act as a President which means that a person whose election is found void by a competent Court can preside over the meeting of the Panchayat is uncontemplated and productive of manifest injustice. He would submit that in fact, the learned District Judge who passed Ext.P2 was oblivious to the statutory provisions contained in Section 156(3A) and he has proceeded as if things cannot go on in the absence of the first respondent as President. Shri Liji J. Vadakkedom, learned counsel for second respondent, at whose instance the election of the first respondent came to be set aside, would submit that there is no merit in the contention of the petitioner in regard to the impugned order. He would draw my attention to Sections 84, 106 and 107 of the Act. He contended that as long as the person is allowed to continue as member, he is entitled to continue as President, if he were already elected as President.

5. Learned counsel appearing for first respondent would submit that there is no basis for the challenge. In fact, learned counsel appearing for respondents 1 and 2 and also the learned counsel for the Election Commission would submit that this is a case where the Appeal itself could be directed to be expedited. Shri Murali Purushothaman, learned counsel appearing for the Election Commission would submit that if the first respondent has otherwise made out a right to continue as a Member, then she would have also the right to continue as the President as at the time of passing the order, the first respondent was indeed not only a Member, but elected President.

6. I would think that this Writ Petition is misconceived. The Writ Petition is filed not by the petitioner in the Election Petition, as in Padmakumar v. Unnikrishnan (2004 (1) KLT 1097) where the petitioner therein was the defeated candidate. That apart, I would think that Ext.P2 order is not liable to be interfered with. It is not in dispute that the first respondent was elected as the President and was continuing as President at the

time when Ext.P1 order was passed. Apparently, when the matter came up in appeal and an application for interim relief was filed, the Appellate Court had to necessarily consider whether the interim relied should be granted with reference to the facts of the case. It is not as if the order of the Munsiff Court is final. As held by this Court in Padmakumar v. Unnikrishnan (2004 (1) KLT 1097), it is certainly open to the Appellate Court to pass interim orders in the interest of justice, providing for safeguards so that a balance is struck between the right of the appellant and also the liability he has suffered by virtue of the Judgment rendered against him. The argument based on Section 156(3A) of the Act, in my view, is misconceived. Section 156(3A) provides for a contingency when the office of the President has fallen vacant. Undoubtedly, if Ext.P2 order has not been passed, certainly it would have called for the application of the said Section. But, this is a case where the first respondent has chosen to challenge Ext.P1 and in prosecution of her Appeal, she has sought and got an order from

the Appellate Court before which it is to be noted, the matter was specifically brought in focus, namely as in the absence of the President, the Vice President of the Panchayat can function, whether the first respondent could continue as President. Thereafter, the learned Judge referred to the decision of this Court and ultimately proceeded to hold as follows:

> *"As submitted in the absence of any stay order passed by the court, the Election Commission is bound to issue a Notification for conducting by-election. If that is permitted, that will certainly affect the appeal. So also, because of the Order the petitioner may not be able to continue as the President of the Panchayat and attend the day- to-day affairs of the Panchayat. Considering all these aspects of the matter, the following directions are issued:*
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> *(i) The petitioner can participate in the meeting and proceedings of the Panchayat, but she cannot exercise any voting right in any such meeting.*

(ii) The Election Commission shall not proceed to issue any fresh notice pursuant to the Judgment of the Munsiff Court for by-election.

(iii) These decisions will be in force till the final decision of the Appeal."

It is clear from a perusal of the Judgment, in particular, paragraph 8 that not only the first respondent can act as a member, but she also can act as President. It is not as if the learned Judge was unaware of the provisions of the Act under which an alternate mechanism is provided. The learned Judge has passed the directions taking note of the rights of the first respondent. It is to be noted that the learned counsel for the petitioner has not addressed before me any argument to the score that the learned Judge passed the directions without establishment of a prima facie case. In other words, on the merits of the matter, I must remind myself that this is a proceeding under Article 226 of the Constitution of India. In proceedings under Article 226 of the Constitution of India, even

proceeding on the basis that the Court under Article 226 can interfere with an order of this nature, interference is premised only on well recognised but limited grounds. It is not as if this Court will sit as an Appellate Court and review the discretion in favour of the first respondent. There is no case made out and the Writ Petition is dismissed.

7. But the learned counsel respondents 1 & 2 and also the learned counsel for the Election Commission would submit that in fact time limit of six months is prescribed. Counsel for respondents 1 & 2 would submit that records have already been called for and the Appeal can be taken up and disposed of at the earliest. Accordingly, there will be a direction to the District Court, Kottayam to take up Appeal A.S. No.84/07 and take a decision in the matter within a period of five weeks from the date of production of a copy of this Judgment, after affording full opportunity to the parties for hearing.

kbk. **K. M. JOSEPH, JUDGE**